IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 20702 of 2004(M)

PETITIONER:

DR.G.GEETHAKUMARI, KOLLAMVILAKOM,
MARUTHANKUZHI, KANJIRAMPARA P.O.
TRIVANDRUM - 30.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:

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1. STATE OF KERALA, REP. BY THE PRINCIPAL SECRETARYTO GOVERNMENT OF KERALA, (HIGHER EDUCATION), SECRETARIAT, TRIVANDRUM.

2. NAIR SERVICE SOCIETY(N.S.S.) REP. BY ITS GENERAL SECRETARY, CHANGANACHERRY.

3. N.S.S.COLLEGE CENTRAL COMMITTEE, CHANGANACHERRY, REP. BY ITS SECRETARY.

4. THE SECRETARY, N.S.S.COLLEGE COMMITTEE, CHANGANACHERRY.

*5. DR. SHEELA T. NAIR, PADINJARA KOTHOOR HOUSE KURUMTHAR, KUZHIKALA P.O., PATHANAMTHITTA 689 644.

*6. DR. JAYASREE S.R., THEMPRAVILA ULIYANADU, KARAMKODU P.O., KOLLAM.

*7. THE KERALA UNIVERSITY
REP. BY ITS REGISTRAR
OFFICE OF THE KERALA UNIVERSITY
TRIVANDRUM.

ADDL. RESPONDENTS 5,6 & 7 ARE IMPLEADED AS PER ORDER DT. 14.9.04 IN I.A. NO.11865/04.

BY GOVT. PLEADER SRI. A.J. VARGHESE
ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)
SRI.KRB.KAIMAL (SR.)
SRI.P.G. PARAMESWARA PANICKER, SR. SC FOR R2
SRI.M.RAJAGOPALAN NAIR, SC, KERALA UTY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/07/2007 ALONG WITH WPC NO. 3521 OF 2007 & WPC NO. 1799 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 20702/04

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE FACULTY OF ORIENTAL STUDIES ISSUED BY THE VICE CHANCELLAR KERALA UNIVERSITY ON 29.8.02.

EXT.P2. COPY OF THE NOTIFICATION IN THE MATHRUBHOOMI DAILY DT. 12.12.01

EXT.P3. COPY OF THE NOTIFICATION NO.Acad.L./4551/R/QT/2003 DT. 21.1.03

EXT.P4. COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY THE DEPARTMENT OF HINDI DT. 23.1.04

EXT.P5. COPY OF THE MEMO DT. 18.6.04 NO. Lect. (Kla)/HINDI/31/04 ISSUED BY THE 3RD RESPONDENT

EXT.P6. COPY OF THE MARK LIST FOR M.A. DEGREE OF THE PETITIONER

EXT.P7. COPY OF THE MASTERS DEGREE CERTIFICATE OF THE PETITIONER

EXT.P8. COPY OF THE RELEVANT PAGE OF THE SSLC BOOK OF THE PETITIONER

EXT.P9. COPY OF THE EXPERIENCE CERTIFICATE ISSUED BY THE PRINCIPAL, RAJAKESAVADAS N.S.S. HIGHER SECONDARY SCHOOL TO THE PETITIONER ON 3.3.03.

EXT.P10. COPY OF THE G.O.(MS) NO.77/2004/H.Edn. DT. 8.7.04

EXT.P11. COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE EDUCATION DEPARTMENT ON 30.6.04

RESPONDENT'S EXHIBITS:

EXT.R2(a). COPY OF THE SELECT LIST DT. 2.7.04 PREPARED BY THE SELECTION COMMITTEE FOR APPOINTMENT TO THE POST OF LECTURER (HINDI)

EXT.R4(b). COPY OF THE NOTIFICATION OF THE KERALA UNIVERSITY PUBLISHED IN THE KERALA GAZETTE DT. 18.1.00

EXT.R6(a). COPY OF THE MARK LIST DT. 6.10.89 ISSUED BY THE UNIVERSITY OF KERALA TO THE 6TH RESPONDENT

EXT.R6(b). COPY OF THE DETAILED MARK LIST

EXT.R6(c). COPY OF THE M.A. DEGREE CERTIFICATE DT. 25.6.98 ISSUED BY THE UNIVERSITY OF KERALA TO THE 6TH RESPONDENT

EXT.R6(d). COPY OF THE CERTIFICATE DT. 28.9.99 ISSUED BY THE UNIVERSITY OF KERALA TO THE 6TH RESPONDENT

EXT.R6(e). COPY OF THE NOTIFICATION NO.Acad.L/029391/R/TQ/99 DT. 28.10.99 ISSUED BY THE UNIVERSITY OF KERALA

EXT.R6(f). COPY OF THE ORDER NO. Ac.FV/25235/2004 DT. 27.10.06 ISSUED BY THE UNIVERSITY OF KERALA

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NOs. 20702 OF 2004,
1799 & 3521 OF 2007

Dated this the 20th day of July, 2007

J U D G M E N T

Since the issues involved in these writ petitions are interconnected, they are being disposed of through this common judgment.

2. The grievance of the petitioners in W.P.(C) Nos.1799/07 & 3521/07 will be redressed, if a decision is taken in the first of the three cases. The parties and documents as they appear in W.P.(C) No. 20702/04 will be referred to in the judgment hereafter.

W.P.(C) NO. 20702/04

3. On December 12, 2001, respondent No.3/ N.S.S. Colleges' Central Committee, had issued Ext.P2 notification inviting applications from eligible candidates for appointment to various posts including that of Lecturer in Hindi in various colleges run by it and coming under the jurisdiction of the University of Kerala and other Universities. Petitioner, respondents 5 & 6 and several others had responded to the above notification. The management had completed the selection process after constituting a selection

committee consisting of two representatives of the management one representative each of the University and the Government as well as a subject expert. The selection committee interviewed the eligible candidates on July 2, 2000.

4. Petitioner filed this writ petition in July 12, 2004, praying inter alia that the ranked list prepared by the management for the post of Lecturer in Hindi be quashed and the management and its central committee be directed to prepare a fresh rank list on the basis of the marks obtained by the candidates who appeared for the interview. Later, when the management produced the select list as Ext.R2(a), petitioner amended the writ petition incorporating a specific prayer for quashing the said list. Respondents 5 & 6 were also impleaded in the writ petition. According to the petitioner, they were placed at Sl. Nos. 1 & 4 respectively in the select list, not on the basis of their qualification or merit but because of some extraneous considerations.

5. It is the case of the petitioner that her name has been excluded from the select list for totally illegal and vested interests. The management had selected candidates in whom they were interested. The academic qualifications and eligibility of the

petitioner had been totally overlooked. She had been informed by the management that she was not considered for selection since she had crossed the age of 35. The other contention raised by the petitioner is that she was excluded from the list at the behest of the management and some of the members of the selection committee though she had obtained highest marks in the interview. This information was given to her by one of the members of the committee.

6. Per contra, it is contended by the management that the selection process was completed strictly in accordance with regulations and the statutory mandates contained in the Act and the relevant First Statute. Though petitioner and three other candidate had in fact crossed the age of 35 and thus become ineligible for consideration, they were also invited for interview. The merit of the candidates including that of the petitioner was considered. The academic qualifications of the candidates were kept in view. Members of the selection committee had awarded marks to the candidates according to their respective merit. Petitioner had obtained only 39 marks whereas the last candidate in Ext.R2(a) select list had obtained 43.6 marks. It is also contended by the

management that the allegations made against the members of the selection committee, and that too without impleading them on the party array are totally baseless. The management had no particular interest in any one of the candidates who appeared for the interview. Selection was not made in a partisan or biased manner. Petitioner was not entitled to be selected considering her performance in the interview.

7. Learned senior counsel appearing for respondents 5 & 6 submits that petitioner has approached this court on the basis of some unfounded assumptions and conjectures. With reference to the contention raised by the petitioner with regard to the ineligibility of respondent No.6 for selection, it is pointed out by the learned senior counsel that respondent No.6 was eligible for consideration for the post in view of Ext.R4(b) amendment brought into the University Regulations in the year 1999. It is seen that the regulation regarding minimum mark prescribed for eligibility for selection to the post of Lecturer was amended by granting relaxation of 5%. The relevant regulation after amendment under Part IV of the “Kerala University Regulations Relating to Qualification of Teachers” reads thus:

> “*A relaxation of 5% of marks provided 55-50% of the marks of the B.Ed degree holders and for their master's*

degree prior to 1991".

The above amendment was incorporated as Note 8 under Category IV "Lecturers"

8. It is also submitted by the learned senior counsel that respondent No.6 had obtained her Masters Degree in the year 1989 and her Doctoral Degree in 1999. Therefore, the relaxation of 5% referred to above had made respondent No.6 eligible for consideration.

9. It is also brought to my notice that the University Grants Commission Scheme for the year 1998-00 had also prescribed relaxation of 5% in the marks. It is thus submitted by the learned senior counsel that the contentions raised by the petitioner that respondent No.6 was not eligible for consideration for the post since she had obtained only 54.7%, cannot be sustained at all.

10. In this context it is pertinent to note that petitioner has not impleaded the selected candidates, Sl. No.7 in the writ petition, though of course as mentioned earlier, only respondents 5 & 6 have been impleaded. She has been impleaded only for the reason that she had been placed at Sl. No.1 in the select list.

11. It is in the back drop of the above facts and circumstances

that the relief sought for by the petitioner in the writ petition has to be considered. As noticed already, petitioner has not impleaded the selection committee or its members in this writ petition though a bold and facile allegation has been made that the management had selected only those candidates in whom they were interested. There are no specific pleadings or averments with regard to any act of bias or favouritism against any of the members of the selection committee. As mentioned earlier, the selection committee comprised of two representatives of the management, one representative each of the University and the Government apart form a subject expert. In the absence of any material on record to show that all the above five members of the selection committee had decided not to include the petitioner in the select list because of bias, favouritism, nepotism etc., I do not find any justification to set aside the selection made by the committee.

12. It is true that petitioner had made a specific plea for a direction to the management to produce the file relating to the selection proceedings of the committee. Learned counsel points that this Court had directed the management to produce the file. But still the file had not been made available before this Court. But

respondent No.2 in its counter affidavit had given the details of the marks given to the candidates who had appeared for the interview. In the absence of any specific allegation imputing any malafide or bias against the members of the selection committee and particularly in their absence on the party array, I am not satisfied that the management has to be directed to produce the file at this belated stage.

13. It has to be remembered that the selection process was completed more that three years ago. It is on record that the selected candidates had been appointed already and they are continuing in service. Their appointments have been approved by the University. However, none of them is being paid salary because of the pendency of the writ petition since this Court had made it clear that their appointments would be subject to the result of the writ petition.

Having regard to the totality of circumstances, and having perused the materials placed on record, I have no hesitation to hold that this is not a fit case to exercise the discretionary jurisdiction vested in this Court under Article 226 of the Constitution of India. I am persuaded to take the above view for yet another reason. In the

matter of selection conducted by a properly constituted committee, as provided under the relevant statutes, this Court should be slow to intervene particularly when there is no prima facie material to show that the selection process had been vitiated in any manner..

Therefore the W.P.(C) No. 20702/04 is dismissed.

W.P.(C) Nos. 1799/07 and 3521/07

Petitioners in W.P.(C) No. 1799/07 were placed at Sl. Nos. 2,4,5 and 6 in the select list referred to above while petitioners in W.P.(C) No.3521/07 was enlisted as Sl. No.7. Their grievance is that their salary and allowances are not being disbursed to them, though they were appointed against sanctioned post after a due process of selection. Their appointments were approved too.

Having regard to the peculiar facts and circumstances and particularly in view of the finding entered as regards the process of selection in the main writ petition, I do not find any reason why the petitioners in these two writ petitions shall not be entitled to get their salary and allowances, particularly since their appointments have been reportedly approved. The Deputy Director concerned shall countersign the salary bills in respect of the petitioners as and when they are presented, if the University has approved their appointments

and if there is no other legal impediment. Of course, it will be open to the Directorate of Collegiate Education to seek clarification, if any, found necessary from the University with regard to the work load, staff strength, etc., in the colleges concerned. Anyhow, the said process shall be completed within one month from the date of receipt of a copy of this judgment. The salary and allowances shall be disbursed to the petitioners within two months from the date of receipt of a copy of this judgment.

A.K. BASHEER, JUDGE

vps

These two writ petitions are at the instance of the two of the selected candidates who have been holding the post since 2004. In view of the decision rendered in W.P.(C) No.20702/07, I do not find any reason why the petitioners in these writ petitions, apart from all the other appointees, shall be denied salary. The authority concerned shall ensure that the entire arrears of salary and allowances payable to the appointees are disbursed to them, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

The writ petitions are disposed of as above.

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007